How to File for Dissolution of Marriage in Montana

(with children)

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DISCLAIMER

Information Not Legal Advice. This document has been prepared for general information purposes only. The information provided is not legal advice. Legal advice is dependent upon the specific circumstances of each situation. Also, the law may vary from state to state, so that some information may not be correct for your jurisdiction. Finally, the information contained in this document is not guaranteed to be up to date. The information cannot replace the advice of competent legal counsel licensed in your state.

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What Forms Will I Need?

Initial Documents:

1. Petition for Dissolution
2. Proposed Parenting Plan
3. Petitioner's Preliminary Declaration of Disclosure of Assets, Debts, Income, and Expenses
4. Summons and Temporary Economic Restraining Order

You may also need the following documents (See page 10 of "Introduction to Family Law in Montana"):

5. Notice of Filing Child Support Guidelines Financial Affidavit
6. Notice and Acknowledgment to Child Support Enforcement Division

Service Documents:

You only need to serve your spouse using one of the following three methods. If you are unable to serve by one method, you may try to serve by using one of the other two.

7. Notice and Acknowledgment of Receipt of Summons and Petition for Dissolution
8. Praecipe
9. Service by Publication:
    a. Affidavit for Publication of Summons
    b. Order for Publication of Summons
    c. Summons for Publication

Final Documents:

1. Request for Entry of Default, Application for Default Judgement, and Waiver of Final Disclosure Requirements
2. Entry of Default
3. Request for Hearing and Order
4. Findings of Fact, Conclusions of Law, and Final Decree of Dissolution
5. Final Parenting Plan
6. Notice of Entry of Final Decree
7. Vital Statistics Form

Nine Steps to Getting a Dissolution of Marriage

Warning:

These instructions will walk you through the steps you will need to follow in order to file your dissolution. This can be a confusing and complicated process. If you have questions about the instructions or any of the forms, you should talk to an attorney.

The steps for filing for a dissolution may be slightly different in your judicial district. Always check with the Clerk of District Court in your district to make sure that you are following the right procedures.

Step One: Collect Information and Make Decisions

[ ] Before completing the dissolution forms, you will need to make decisions regarding the children, the marital property, and the marital debts. Be sure to read "Introduction to Family Law in Montana" before you begin filling out the forms. It will highlight the major decisions you will have to make.

[ ] You should begin by making a list of all marital property and debts and deciding who should get what property and who should have to pay what debts. If you are not sure how much you owe on current debts, or if you are worried that your spouse has incurred debts without your knowledge, you may want to get a credit report.

[ ] If you already have a Child Support Order from the Child Support Enforcement Division, get a copy of the Order to include with your Petition. If you do not already have an Order, you will need to complete the Montana Child Support Guidelines Financial Affidavit.

Step Two: Prepare the Forms

[ ] Included in this packet are all of the forms you will need to file for a dissolution of marriage. Fill out each form neatly and completely. Be aware that some judicial districts may require you to type the forms. For a list of the forms you will need, read "What Forms Will I Need?" also in this packet. If you have questions about the forms, talk to an attorney.

Step Three: File Your Documents with the Court

[ ] After you have completed all of the forms, make copies of the following documents:

  [ ] Summons (one copy)

[ ] Petition for Dissolution (three copies)
[ ] Proposed Parenting Plan (three copies)
[ ] Petitioner's Preliminary Declaration of Disclosure of Assets, Debts, Income, and Expenses(one copy)

[ ] Also make copies of the following documents, if they are necessary for your case (See "Introduction to Family Law in Montana," page 10):
[ ] Notice of Filing Child Support Guidelines Financial Affidavit (with attached Affidavit) (two copies)
[ ] Notice and Acknowledgment to Child Support Enforcement Division (three copies)

Always keep one copy of everything that you file with the Clerk of District Court or serve on your spouse. The original documents get filed with the Clerk. Every time you file a document with the Clerk, bring a copy of the document with you and ask the Clerk to stamp it, showing that the document has been filed. Keep an organized file of all your court papers and letters concerning your case.

[ ] Go to the Clerk of District Court in the County Courthouse where you are filing for your dissolution. Generally, you will file in the county where you are living. You will have to pay a filing fee in order to file your papers with the Court. If you cannot afford to pay the filing fee, you may be eligible to have prepayment of the fee waived. If you think you may be eligible for such a waiver, ask the Clerk of District Court for an "Affidavit of Inability to Pay Filing Fees."

[ ] After you have paid the filing fee (or the Judge has decided to waive the filing fee), file the following documents with the Clerk of District Court. Remember to have the Clerk date and stamp a copy of each document to keep for your records.
1. Summons
2. Petition for Dissolution
3. Proposed Parenting Plan
4. Notice of Filing Child Support Guidelines Financial Affidavit (if necessary)
5. Notice and Acknowledgment to Child Support Enforcement Division (if necessary)

[ ] The Clerk will sign and stamp the original Summons and return it to you. Make two copies of the Summons that has been signed and stamped by the Clerk.

[ ] The Clerk will put a cause number on all of the documents you filed. This cause number is how the court will identify your case. Put this cause number on all of your forms from now on.

Step Four: Notify CSED (if necessary)

[ ] If you receive public assistance under Temporary Assistance to Needy Families (TANF) or if you are already receiving services from the Child Support Enforcement Division, you must notify CSED and the Attorney General of the dissolution by sending them the following:

1. Notice and Acknowledgment to Child Support Enforcement Division
2. Petition for Dissolution
3. Proposed Parenting Plan
4. Self-addressed stamped envelope

[ ] Both CSED and the Attorney General need to send an "Acknowledgment of Service" back to you before your dissolution can be entered by the court. When you receive the Acknowledgment back from both offices, make one copy of each, and file the originals with the Clerk of District Court. CSED may decline to be a party to your dissolution by signing the "Declination" on the Acknowledgment of Service they send back to you. If they do not decline, CSED will need to be served with all subsequent documents you file with the court.

Step Five: Notify Your Spouse

After you file your papers with the Clerk, you will need to serve the papers on your spouse using <u>one</u> of the methods described below.

[ ] Depending on how you plan to serve your spouse, make copies of either the:

- [ ] Notice and Acknowledgment (two copies)
- [ ] Praecipe (one copy)

or

- [ ] Affidavit for Publication of Summons, Order for Publication of Summons, and Summons for Publication (two copies of each)

Choose One:

[ ] **Notice and Acknowledgment**. If your spouse is willing to help you dissolve your marriage, you may serve him or her by mailing the following documents:

1. Notice and Acknowledgment of Receipt of Summons and Petition for Dissolution of Marriage (original and one copy)
2. Summons (copy)
3. Petition for Dissolution (copy)
4. Proposed Parenting Plan (copy)
5. Petitioner's Preliminary Declaration of Disclosure of Assets, Debts, Income, and Expenses (original)
6. Notice of Filing Child Support Guidelines Financial Affidavit (copy)
7. Notice and Acknowledgment to Child Support Enforcement Division (copy)

Also, include a self-addressed stamped envelope.

Your spouse should sign and return the Notice and Acknowledgment back to you. The Notice and Acknowledgment is your proof that your spouse was served. If you do not receive the Notice and Acknowledgment back within 20 days, you may need to serve your spouse by one of the other methods. You may be able to ask the court to have your spouse pay for any fees associated with these other forms of service.

[ ] **Service by Sheriff**. Sheriffs in Montana will serve the papers on your spouse for free if you have an Order of Inability to Pay from the Judge, otherwise you will need to pay the sheriff for this service. Either mail or personally deliver the following documents to the sheriff in the county where your spouse lives:

1. Praecipe (original)
2. Summons (original and one copy)
3. Petition for Dissolution of Marriage (copy)
4. Petitioner's Preliminary Declaration of Disclosure of Assets, Debts, Income, and Expenses (original)
5. Petitioner's Proposed Parenting Plan (copy)
6. Notice of Filing Child Support Guidelines Financial Affidavit (copy)
7. Notice to Child Support Enforcement Division (copy)

Also give the sheriff a self-addressed return envelope. When the sheriff has served the documents, s/he will send you a Return of Service and the original Summons. The Return of Service is your proof that the documents were served.

[ ] **Service by Publication**. If you are unable to serve your spouse by one of the methods above, you may be able to serve by publication. To serve by publication you will need the original and two copies of the following documents:

1. Affidavit for Publication of Summons
2. Order for Publication of Summons
3. Summons for Publication

[ ] Take all three documents to the Clerk of District Court. The Clerk will sign, date and stamp the Order for Publication of Summons and the Summons for Publication. Have your copies of all three documents dated and stamped by the Clerk.

[ ] Mail or hand deliver one copy of both the Order for Publication of Summons and Summons for Publication to the designated weekly newspaper with instructions to run your notice for three weeks. You must also pay a publication fee to the newspaper. This fee cannot be waived.

After the paper runs your notice for three weeks, they will send you a notice called "Proof of Publication." The Proof of Publication is your proof that the summons was served.

Step Six: File the Original Summons and Return of Service

[ ] After you receive proof that your spouse was served (by either a Return of Service, a Notice and Acknowledgment, or a Proof of Publication), make one copy of the proof of service. File the original with the Clerk of District Court. At the same time, file the original Summons.

If your spouse files a Response or Answer with the court, you should consult with an attorney before proceeding. The rest of these instructions assume your dissolution is not being contested by your spouse.

Step Seven: Request a Default

[ ] Wait 21 days from the date your spouse was served. Give the Clerk of District Court your cause number and confirm that your spouse has not filed a Response.

[ ] Complete and make copies of the following documents:

1. Findings of Facts, Conclusions of Law, and Final Decree of Dissolution (two copies)
2. Final Parenting Plan (two copies)
3. Request for Entry of Default, Application for Default Judgment, and Waiver of Final Disclosure Requirements (one copy)
4. Entry of Default (one copy)
5. Request for Hearing and Order (one copy)
6. Vital Statistics Form (one copy)

[ ] File the Request for Entry of Default, the Entry of Default, and the Request for Hearing and Order. As always, get a filed stamped copy of each document for your files. The Clerk will schedule a final hearing for your dissolution.

[ ] Also leave with the Clerk your original Findings of Fact, Conclusions of Law, and Final Decree of Dissolution and your original Final Parenting Plan. The Clerk will give these documents to the Judge to review before your final hearing.

Step Eight: Go to Court for Your Hearing

[ ] Be at the courthouse at least 15 minutes before your scheduled hearing time. Dress as you would for an important meeting or job interview. Ask the Clerk of District Court which courtroom your Judge is in. Go to the appropriate courtroom and wait for the Judge to call your name and cause number. Be calm and polite and address the Judge as “Your Honor.”

[ ] Bring your two copies of the following documents with you to the hearing:
1. Findings of Fact, Conclusions of Law, and Final Decree of Dissolution
2. Final Parenting Plan

[ ] The Judge will ask you to be sworn in and to take the witness stand. The Judge will ask you a few questions regarding your Petition and Proposed Decree. The questions should center around the following topics:

1. Whether you have been a resident of Montana for the past 90 days
2. The parenting arrangements described in your papers
3. Whether your spouse is capable of contributing to the support of the children, and if the child support amount is fair and reasonable
4. Whether your marriage is irretrievably broken
5. If you want your former name to be restored
6. If your proposal for dividing the assets and debts is fair and equitable

The Judge should then sign your Decree and Parenting Plan and excuse you.

[ ] *Immediately after the hearing*, bring the signed Decree and Parenting Plan to the Clerk of District Court. Ask the Clerk to put the appropriate stamps on your two copies of the documents to show that they have been filed and signed by the Judge. At the same time, file your Vital Statistics Form.

Step Nine: Notify Your Spouse

[ ] Make two copies of the Notice of Entry of Decree.

[ ] Mail copies of the following documents to your spouse:
1. Notice of Entry of Decree
2. Findings of Fact, Conclusions of Law, and Final Decree of Dissolution
3. Final Parenting Plan

[ ] File the original Notice of Entry of Decree with the Clerk of District Court. Your spouse has 30 days from your filing of the Notice of Entry of Decree to appeal the Decree. For this reason, it is important that you file the Notice with the Clerk.

[ ] Keep your copies of the Decree and Parenting Plan in a safe place.